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**JUN 17 2004**

In re Application of:

IINO *et al.*

Serial No.: 09/369,090

Filed: August 05, 1999

Attorney Docket No.: S004-3747

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DECISION ON PETITION  
TO WITHDRAW HOLDING  
OF ABANDONMENT

This is a decision on the petition filed on December 12, 2003, under 37 C.F.R. § 1.181, to withdraw the holding of abandonment of the above-identified application. No fee is required.

The petition is **GRANTED**.

A final Office action was mailed on June 13, 2002. An amendment after final was filed on September 20, 2002. An Advisory action was mailed on October 08, 2002. On October 21, 2002, another Advisory action and an Examiner Interview Summary were mailed. A Notice of Appeal and a Request for an Extension of Time were filed on November 13, 2002. The application was held abandoned for failure to timely file a response to the Office action mailed on October 21, 2002. A Notice of Abandonment was mailed on October 27, 2003.

Petitioner asserts that on January 06, 2003, a response including a Brief on Appeal was filed. To support this assertion, petitioner has submitted a copy of the Brief, and a copy of a return postcard receipt, which acknowledges receipt in the USPTO of a Brief on Appeal on January 13, 2003.

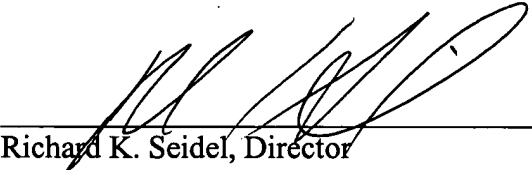
A review of the application file record reveals that the above-identified response having been acknowledged as being received in the PTO on January 13, 2003, is not of record in the application file and cannot be located. However, M.P.E.P. § 503 states, "A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO." Accordingly, it is concluded that the response was timely received in the PTO but lost somewhere after receipt thereof.

For the above stated reason, the petition is granted. The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. The application is restored to pending status.

The copy of the Brief on Appeal submitted with the petition on December 12, 2003, is accepted since the response originally submitted was apparently lost.

The application file is being forwarded to the examiner of record for consideration of the Brief.

Inquiries regarding this decision should be directed to Clayton E. LaBalle at (703) 308-0519.



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